



QUALCOMM Incorporated

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Via ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Oral Ex Parte Presentation in WT Docket No. 05-7

Dear Ms. Dortch:

On behalf of QUALCOMM Incorporated ("QUALCOMM"), this is to report that yesterday, Larry Hartigan, Jennifer McCarthy, Jan Lezny, and I, along with Mark Wallace of Akerman Senterfitt, met with Catherine Bohigan, Fred Campbell, and Heather Dixon to discuss QUALCOMM's Petition for Declaratory Ruling in the above-referenced proceeding.

In a prior meeting with Chairman Martin and his staff, we were asked to provide additional information about the impact on TV and DTV stations that could be affected by a grant of QUALCOMM's Petition for Declaratory Ruling. During yesterday's meeting, we explained that QUALCOMM gathered this information after re-examining its engineering analyses and assumptions in those markets in which QUALCOMM believes it can co-exist with adjacent or co-channel television stations in an effort to reduce even further the level of *de minimis* over-the-air potential interference to the fraction of the people who live in the confined geographic areas and watch the affected TV stations over the air, while still delivering MediaFLO to the greatest number of people in the affected markets. This re-examination was based on the assumption that QUALCOMM would reach agreements with television stations in a number of markets in which the level of interference would exceed the *de minimis* level, and that these agreements would be approved by the Commission.

QUALCOMM's re-examination reaffirms that the potential over-the-air interference is truly *de minimis*, and the benefits to the public that MediaFLO will deliver in terms of innovative and beneficial video, audio, and data content in a 6 MHz channel far outweighs this very low level of over-the-air interference to a fraction of markets to a fraction of viewers of a particular station for a very limited period of time (until the DTV transition ends). Indeed, the majority of stations who could potentially be affected would have over-the-air interference of under

1%. We explained, however, that to provide a viable nationwide service, QUALCOMM does need to rely on a 2% interference test, the same test relied upon by DTV stations vis-à-vis other DTV and analog TV stations on the same Lower 700 MHz spectrum for which QUALCOMM holds its licenses. The grand total of households who will potentially be adversely affected by a grant of QUALCOMM's Petition is less than 3,900, while QUALCOMM would be able to deliver MediaFLO to over 200 million people.

We presented the following results of QUALCOMM's engineering studies. In the target 125 markets around the country, in which QUALCOMM would deliver MediaFLO to 200 million people, there are 55 markets in which QUALCOMM believes that it can co-exist with TV and DTV stations operating on Channel 54, 55 and 56 until the end of the DTV transition. In those markets, 28 of the stations in question are analog stations and 27 are digital, for a total of 55 stations. Of those 55 stations, nine of them would have potential over-the-air interference of 0.1% or less, a level of interference that is so low as to be imperceptible, leaving 46 affected stations (24 analog and 22 stations). However, even including those nine stations, QUALCOMM's analysis shows that MediaFLO could cause potential over-the-air interference of less than 1% to 17 of the analog stations and 11 of the digital stations, 1 to under 1.5% to another one analog station and seven digital stations, and 1.5 to 2% to ten analog stations and nine digital stations.

We went on to explain that QUALCOMM has analyzed this potential over-the-air interference on a market by market basis, by factoring in the large percentage of households who watch TV via cable or satellite and then by factoring in the percentage of the households who do not watch the particular station in question based on reported ratings. The result yields the true number of people who could potentially be affected by temporary over-the-air interference from MediaFLO in these markets. Similar analyses were submitted to the Commission in support of the requests of analog stations for approval to shut down prior to the end of the DTV transition in markets such as Twenty Nine Palms, CA; Atlantic City, NJ; Goldvein, VA; and Riverhead, NY based on showings of the cable and satellite penetration in those markets and the ratings of the analog station filing the shut down request, and the Commission granted all of those requests.

Using this analysis with respect to the 28 analog stations, the total number of households potentially affected by over-the-air interference from MediaFLO is 1,559 households. For the 27 affected digital stations, that number is 2,331 households. So, the grand total of potentially affected households is 3,890 households, a figure that has to be weighed against the 200 million people who would be able to receive MediaFLO in the target 125 markets.

This analysis was very conservative because in making these calculations, QUALCOMM assumed that the rating for each digital station is equal to the rating of the sister analog station, and in cases in which an analog station either had a rating of zero or was not rated at all, we used a rating of 3.25, the average rating for all other analog stations in our analysis.

We also used this same analysis to present data on the potential over-the-air interference from MediaFLO to 75 million people in 30 target markets. In those 30 markets, there are 15 markets in which QUALCOMM would need to rely on the OET-69 methodology to show de minimis potential over-the-air interference to a total of 26 television stations (nine analog and 17 digital). A total of four of these stations (one analog and three digital) would have potential over-the-air interference of less than 0.1%, which again is imperceptible, leaving 22 potentially affected stations. In any event, of the nine analog stations, five would have potential interference of under 1%; one would have potential interference of 1 to under 1.5%; and, three would have potential interference of 1.5 to 2%. Of the 17 potentially affected digital stations, nine would have potential interference of under 1%; one would have potential interference of 1 to under 1.5%; and, three would have potential interference of 1.5 to 2%. A grand total of 2,718 households would potentially be affected in these markets (1,194 as the result of the impact on the analog stations and 1,524 households as the result of the impact on the digital stations.)

After presenting all of this data, we argued that the issue before the Commission in ruling on QUALCOMM's Petition for Declaratory Ruling boils down to this: should QUALCOMM be permitted to deliver MediaFLO to the approximately 200 million people who live in the target 125 markets (and the 90 million people who live in the subset of 55 markets in question), even though QUALCOMM could potentially cause interference to approximately 3,900 households when they watch a particular UHF TV station over-the-air for a period of three years or less (until the DTV transition ends). We respectfully submitted that the public interest overwhelmingly supports a grant of QUALCOMM's Petition for Declaratory Ruling.

Respectfully submitted,

/s/ Dean R. Brenner

Dean R. Brenner
Vice President, Government Affairs
QUALCOMM Incorporated

Cc: Catherine Bohigan
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